



U.S. Embassy's Quarterly E-Bulletin

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L I N U S

Legal Innovations in the U.S.

Access to Justice

Specialized Courts and Community Mediation in the United States

Welcome to the third issue of **LINUS** - Legal Innovations in the U.S. - the U.S. Embassy's quarterly e-bulletin. Our goal is to provide you with timely and relevant information. **LINUS** will also enhance and expand your legal expertise by showcasing innovative legal practices, ideas, experiments, and organizations, and by providing references. While we recognize that the U.S. and Israel have different theories and practices of law, we also see many similarities. By sharing information on U.S. law, we hope to provide practices that you may be able to adapt and that will benefit both you and those whom you serve. We also hope that the dissemination of this information will raise awareness and encourage openness and debate. Our third edition of **LINUS** focuses on *Access to Justice --Specialized Courts and Community Mediation in the United States*.

The U.S. legal system reflects the growing complexity of American society. Due to complicated court cases, rapid technological changes, and increasing regulation, legal professionals today need to expand their knowledge and understand each other's constraints in order to provide more effective and efficient services to their clients, whether in the corporation or in the courtroom.

The rule of law, fundamental to the existence of a free and democratic society, is our area of focus and activity. Since 1995, the U.S. Embassy has brought together American and Israeli legal professionals to share ideas and processes. This exchange continues to enrich both U.S. and Israeli legal professionals, broadening awareness of alternative legal approaches and innovations.

Future e-bulletins will include the following topics:

- Alternative Dispute Resolution
- Community Mediation Methods
- Ethics and the Law
- Innovative Court Practices
- Intellectual Property Rights



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Each bulletin will include a bibliography relating to that issue's central topic.

For the latest information on legal issues and back issues of this bulletin, please visit:
<http://israel.usembassy.gov/publish/law.html>.

Through its Office of Public Affairs and The American Center's Information Resource Center, the U.S. Embassy offers a variety of activities to strengthen the Israeli public's understanding of American society; it also conducts periodic seminars and video-conferences in Israel as well as educational and professional exchanges between the United States and Israel.

We welcome your feedback and, in particular, we welcome any comments on the content of this bulletin. Please send your emails to fa@pd.state.gov.

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ACCESS TO JUSTICE SPECIALIZED COURTS AND COMMUNITY MEDIATION IN THE UNITED STATES

"Courts are accused of providing revolving door justice when they're perceived as being more concerned with processing cases than with obtaining effective outcomes for victims, defendants and their communities." Roger K. Warren, president of the National Center for State Courts.

"With every initiative, the goal is always to deliver justice that is both fair and effective – for litigants and the public. The specialized courts we have created in New York take into account the core issues often driving criminal behavior—drug abuse, domestic violence, family dysfunction—in the hopes of achieving a long-term solution for society, not just a quick fix." New York Chief Judge Judith S. Kaye.

Access to justice refers to people's ability to use public and private justice services. Equal access means that such ability is not limited or restricted to certain social classes or groups. Equal access to justice also includes the prompt and impartial response of those justice institutions to ensure a fair and efficient dispute resolution. This edition of **LINUS** is a follow-up to the recent seminar, *Specialized Courts in the U.S.: Establishment and Administration of Drug and Youth Courts*, organized by the U.S. Embassy's Office of Public Diplomacy and held in September 2003 at the Dan Caesarea Hotel.

Over the past decade, hundreds of experimental courts have been established across the United States, each testing new solutions to such issues as substance-abuse addiction, domestic violence, child neglect, and quality-of-life crime. These "problem-solving courts," or "*specialized courts*," include courts specializing in drug, domestic violence, community conflicts, family treatment, mental health, gun crimes, and others. Specialization in the criminal courts has become a response to the problem of ever-growing caseloads.



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Potential benefits of *specialized courts* are numerous, including:

Developing judicial and attorney expertise in a class of cases which leads to greater efficiency and also helps to produce a higher quality of service by judges, prosecutors, defenders, and others in the legal circles;

Drawing special attention to a class of cases that would not otherwise receive special attention from a general jurisdiction criminal court. The circuit determines which class of cases requires the attention of a specialized court based on local needs;

Transferring a problematic class of cases that would otherwise hamper general jurisdiction criminal court;

Allowing for judicial intervention and supervision of offenders diverted from the traditional criminal justice correctional system;

Fostering innovation and experimentation;

Creating better coordination of social services and treatment by bringing together all the parties under a "team concept."

However, if not efficiently managed, there are potential disadvantages to *specialized courts*:

Courts' efficiency is not always comparable with notions of fairness or justice. Some claim that *specialized courts* focus on efficiency to the detriment of justice;

Proliferation of *specialized courts* will create too much variation and could undermine uniformity and centralization;

Small towns and outlying areas may not have access to *specialized courts*, creating inequities within the criminal justice system;

Administrative inefficiency may result. If not adequately funded, state attorneys, public defenders, and other legal and social professionals may encounter staffing and scheduling problems in attempting to cover *specialized courts*;

These courts may risk "capture" by one class of litigant. Some argue, for instance, that domestic violence judges would be biased in favor of the alleged victim.



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The Executive Council of the Florida Bar's Criminal Law Section developed an excellent ground-rule regarding the establishment of *specialized courts*: "While the utilization of specialized court divisions may be efficient or effective, the decision of whether to have such divisions should rest with each individual circuit. It should not be legislatively mandated. Each individual judicial circuit is well aware of the talents, resources, needs and judicial personalities within that circuit. The judiciary should be the governmental branch that determines the most effective and efficient way to run the courts."

The earliest specialized court was the juvenile court founded in Chicago in 1899. Within a little more than two decades, every state had legislated some form of a juvenile court and juvenile code. Early judges trumpeted the benefits of the new juvenile court: that the issue was not guilt or innocence but how the child had developed this way and what might be done in his interest to enable a constructive and law-abiding future. The aim of the court was to treat and rehabilitate, and the court was deliberately designed to be flexible and quick to intervene.

Today, juvenile courts in the U.S. bear little resemblance to the original concept, and the day-to-day atmosphere in modern juvenile courts is increasingly indistinguishable from that of criminal courts. These courts are attracting intense criticism from the public. Dr. Jeffrey Butts, Director of the Program on Youth Justice at the Urban Institute in Washington, D.C., claims that many people "simply no longer accept the concept of delinquency, or diminished legal responsibility due to age." Nearly all states in the U.S. have passed laws to send far more juveniles to criminal court and some jurisdictions have introduced formal sentencing guidelines that limit the discretion of juvenile court judges. Maintaining the juvenile court and its separate delinquency jurisdiction requires an effective, understandable intake process, a fair and efficient system of fact-finding and adjudication, and a diverse menu of services and sanctions that are suitable for a wide range of offenders.

The movement toward *specialized courts*, aside from the juvenile courts, actually began in the early 1960s with a handful of teen (or youth) courts, but the concept was not widely accepted. Today, these *specialized courts* are rapidly spreading throughout the country. In general, youth courts consist of four models: the adult judge, the youth judge, the youth tribunal, and peer jury.



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In contrast to juvenile and youth courts, drug courts appeared in the late 1980s in response to the rising level of drug-related crime. The first drug court appeared in Miami, Florida in 1989. The Dade County Circuit Court provided the sitting judge with the authority to devise – and proactively oversee – an intensive community-based treatment, rehabilitation, and supervision program for felony drug offenders in an effort to reduce the recidivism rates of these offenders. During the past several years, a number of jurisdictions have looked to the experiences of the adult drug court model to address an increasing population of substance-abusing youth. The purpose of the juvenile drug courts is to provide intensive treatment programs. Under the supervision of the juvenile courts, these courts provide specialized services to eligible drug-involved youth and their families. Juvenile drug courts provide intensive and continuous judicial supervision over delinquency and status offense cases that involve substance abuse, and also coordinate and supervise delivery of an array of support services, such as substance abuse treatment, mental health, and education.

Drug court programs vary from one jurisdiction to another depending upon the resources and needs of the communities they service. About half of all drug courts are diversion programs. Those brought to the court who do not complete their program, face prosecution and sentencing for their original charges. Charges against those who successfully complete the program may be reduced or dropped.

Drug courts represent an innovative judicial experiment in which offenders are held accountable for their actions but afforded the tools they need to break the patterns of drug abuse that not only damage their lives and those close to them but also the communities in which they live.

Similarly, gun courts in the U.S. arose in response to the rising tide of gun violence. The first adult gun court was established in Providence, R.I. in 1994. The premise behind the implementation of this court was that swift, sure, and sometimes, severe penalties deter gun violence. The courts put theory into practice and created a separate gun case calendar which was concurrent with all other Superior Court calendars and required that any case involving a gun be scheduled for trial within 60 days of completion of discovery. As with the drug court judges, gun court judges play a pivotal role in ensuring that the youth, parents, and in certain cases the entire family are properly assessed and receive the necessary social services.



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Family courts, inspired by Roscoe Pound, a former Dean of Harvard Law School, were begun in Rhode Island in 1961. Their spread was slow into the 1990s, and those that were created took different forms and had different subject-matter jurisdictions. The Family Court concept of one court/one judge, centralizing the different family-related matters, crosses over traditional jurisdictional boundaries. The judge who hears a child abuse/neglect case as well as the parents' divorce should be able to enter consistent orders. There is no one model of a family court – different systems have been designed to fit local legal cultures or meet specific legislative direction.

Community justice practitioners argue that even though *specialized courts* have had some excellent results, the justice system still ignores its biggest clients – citizens and neighborhoods that suffer the everyday consequences of high crime levels. One response to this criticism has been the establishment of the community court which goes one step beyond the *specialized courts* to create legal institutions that bring citizens closer to legal processes and resolution. Community justice re-conceptualizes the judicial branch. In this concept, the judicial branch is no longer an impartial arbiter of state power but instead seeks to serve a victimized community that is in need of repair. The judicial branch is no longer reactive but proactive, pressing for social transformation and neighborhood healing. It pushes for the mobilization of social services under the auspices of the court.

The courts and individuals no longer act alone, as the community justice model adds a third component – the community. At the practical level, the community court proposes several ways in which it can benefit a neighborhood:

- Bringing the court and its service into a community with limited access to public and private services;

- Placing the court in the neighborhood enables the court both physically and administratively to be closer to the social and behavioral origins of the problems that it seeks to address;

- Bringing services to bear on these problems under the administrative aegis of the court;

- Allowing the courts to focus at the level of the individual to counteract some of the social sources of crime – such as low levels of human capital, addiction problems, and other medical and social needs. This is done by linking up individuals to different social services from treatment programs to employment training. The courts' sanctions are catered to individuals and their needs, hoping to reduce the motivation for criminal behavior.



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There was a move in the 1970s to complement the judicial system by moving disputes out of the courts and resolving them within the community. Today, *community mediation* programs flourish in the United States. Janet Reno, U.S. Attorney General in the Clinton Administration, stated: "Some amount of conflict is inevitable in every society. The key question is how that conflict gets resolved. America's *community mediation* programs provide an important piece of the answer in this country. Through *community mediation* programs, we can help each other build and strengthen our communities and neighborhoods by working to help individuals and communities solve their own problems and resolve their own disputes."

The rule of law in a democratic society is a plan for how that state wishes to function. However, if access to justice is unavailable to many, due to budget constraints and lack of information of the individual's rights, then this rule of law is merely a paper document. A recent survey stated that 45% of legal disputes currently within the courts could be resolved using *community mediation* had the individuals received preliminary legal information.

The National Association for *Community Mediation* based in Washington, D.C., lists the components of *community mediation* as:

- Using trained community volunteers as the primary providers of mediation services;

- Having a private non-profit or public agency, or program thereof, with a governing/advisory board;

- Using mediators, staff and governing board who are representatives of the diversity of the community served;

- Providing direct mediation access to the public through self-referral and striving to reduce barriers to service including physical, linguistic, cultural, programmatic and economic;

- Providing service to clients regardless of their ability to pay;

- Initiating, facilitating and educating for collaborative community relationships to effect positive systemic change;



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Engaging in public awareness and educational activities about the values and practices of mediation;

Providing a forum for dispute resolution at the early stages of the conflict;

Providing an alternative to the judicial system at any stage of the conflict.

Many *community mediation* programs are today provided in neighborhood justice centers. These centers are sometimes located next to or within the courts. The intent is to lessen the burden on the criminal justice system by diverting those cases which can be resolved outside of the courthouse. In addition, the goal is to provide local residents, businesses, and institutions with access to problem solving, dispute resolution and related legal services enabling them to effectively resolve disputes in a non-adversarial fashion.

A democratic society cannot survive without an effective, efficient rule of law. The courts must be seen to embrace the cases and resolve the disputes justly, expeditiously and economically. The court's role is, ultimately, to preserve the rule of law – a basic underpinning of the U.S. system of government. To preserve that rule of law requires the active support and confidence of the public the courts serve. In recent years, the court system, along with other branches of government, has experienced a significant decline in the level of public trust and confidence.

As an institution, it is important for the court to take an active role in enhancing the public's perception of the court system. It is important to educate and sensitize the public to the mission of the courts and demonstrate the courts' commitment to fairness, equal justice, and to the rule of law. Public understanding will lead to public confidence in the courts and public respect and support for the judicial system. The establishment of *specialized courts* and *community mediation* are important steps towards this goal.



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The following Web sites and bibliography provide information on the subject of Access to Justice, Specialized Courts, and Community Mediation in the United States.

Specialized Courts: Youth, Drug, and Gun Courts in an Accountability-Based System. Office of Juvenile Justice and Delinquency Prevention: Office of Justice Programs, U.S. Department of Justice:

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, as amended. In June, 2002, the OJJDP awarded a grant to the Development Services Group, Inc., to prepare a technical assistance resource guide. This guide does not constitute all relevant materials but is an excellent starting point for locating information on these topics.

<http://www.dsgonline.com/publications.html>

Development and Implementation of Drug Court Systems, National Drug Court Institute, Office of National Drug Control Policy and the Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice:

Drug courts started out as single diversionary programs aimed at the less serious criminal offender involved in drug use. Over the past ten years, practitioners have modified and extended drug court programs to include post-plea drug offenders, those charged with criminal offenses based on a drug abuse problem, multiple DUI offenders, juveniles, and adults charged in the family drug court with drug related child neglect offenses. The expansion in drug courts is based on the continued success and good will that existing drug court programs have produced across the nation.

<http://www.ndci.org/develop.pdf>

Research on Drug Courts: A Critical Review. The National Center on Addiction and Substance Abuse (CASA) at Columbia University:

This is a critical review of 37 published and unpublished evaluations of drug courts produced between 1999 and 2001. Drug courts have achieved considerable local support and have provided intensive, long-term treatment services to offenders with long histories of drug use and criminal justice contacts, previous treatment failures, and high rates of health and social problems. Less clear are the long-term post-program impacts of drug courts on recidivism and other outcomes.

<http://www.drugpolicy.org/docUploads/2001drugcourts.pdf>



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Problem-Solving Courts. Center for Court Innovation, New York, N.Y.:

The Center for Court Innovation is a unique public-private partnership that is dedicated to enhancing the performance of courts and those whose work intersects with the courts. In performing this work, the Center's goals are to reduce crime, aid victims, strengthen communities, and promote public trust in justice. The history of the Center stretches back to 1993 with the creation of the Midtown Community Court.

<http://www.courtinnovation.org/center.html>

An Honest Chance: Perspectives on Drug Courts

From 1997 to 1999, the Crime and Justice Research Institute conducted focus groups with drug court participants in six American drug courts to solicit the views of individuals who are involved in the drug court process. The objective was to test some of the assumptions that have been made about drug court participants in the design and operation of drug courts—assumptions concerning the role of the courtroom, the drug court judge, drug testing, and the use of sanctions, particularly jail and treatment services. The focus group approach was a way of providing more immediate, personal feedback than might otherwise occur and placing evaluation research in the context of the experiences and impressions of the most important participants in the drug courts.

<http://www.ncjrs.org/html/bja/honestchance/execsum.html>

Community Courts: An Evolving Model

In recent years cities and towns across the U.S. have embarked on an experiment to test the proposition that courts can play a role in solving complex neighborhood problems and building stronger communities. Since the 1993 opening of New York City's Midtown Community Court, the nation's first, dozens of cities have begun planning community courts.

<http://www.ncjrs.org/pdffiles1/bja/183452.pdf>

National Association of Drug Court Professionals

Established in 1994, NADCP is the membership and outreach organization for over 1,200 drug courts across the nation. The National Drug Court Institute, a division of NADCP, was established in 1997 by the Office of National Drug Control Policy.

<http://www.nadcp.org/>



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A Leadership Guide to Statewide Court and Community Collaboration

Since 1994, the National Center for State Courts, with funding from the Bureau of Justice Statistics, has been engaged in a Community-Focused Court Initiative. The initiative began with a primary concern to document the variety of community-focused court programs in existence and distill their core elements. To that end, extensive field research was conducted in eight successful community-focused courts.

http://www.ncsconline.org/WC/Publications/Res_CtComm_CFCLeadershipGuidePub.pdf

An Overview of Florida's Criminal Justice Specialized Courts. Florida Senate Criminal Justice Committee Staff:

Specialization in the criminal courts has become a popular response to the problem of burgeoning caseloads. In 1972, Florida voters amended their State Constitution and, in so doing, substantially reformed the operation and structure of the courts.

<http://www.fcc.state.fl.us/fcc/reports/courts/ctgen.html>

Technical Assistance and Information Services Available to Local Communities for Drug Court Planning and Implementation. Office of Justice Programs, Department of Justice, Washington, D.C.

The American University provides free technical assistance to local communities planning and/or implementing drug court programs through a cooperative agreement with the Drug Court Program Office of the Office of Justice Programs, U.S. Department of Justice.

<http://www.american.edu/justice/publications/nacofct.htm>

2000 Drug Court Survey Report. Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project, American University, Washington, D.C.

The 2000 Drug Court Survey Report was prepared to provide a more current overview of drug court activity nationwide, providing a comparative profile of 171 or the 194 adult drug court programs in operation. The report focuses on the critical operational elements and implementation issues that have emerged during the course of the drug court experience generally and, where possible, notes trends and/or divergences.

<http://www.american.edu/academic.depts/spa/justice/publications/volII.pdf>



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Office of Juvenile Justice and Delinquency Prevention, Department of Justice, Washington, D.C.

Focuses on juvenile justice and delinquency prevention. The office offers information on funding, programs, resources, and technical assistance.

<http://ojjdp.ncjrs.org/>

National Association for Community Mediation, Washington, D.C. (NAFCM)

The National Association is the only national non-profit organization dedicated solely to community-based mediation programs.

<http://www.nafcm.org/index.cfm>

The Justice Policy Center. The Urban Institute, Washington, D.C.

The Urban Institute is a nonprofit, nonpartisan policy research and educational organization established to examine the social, economic, and governance facing the nation. The Justice Policy Center (JPC) carries out nonpartisan research to inform the national dialogue on crime, justice, and community safety.

<http://www.urban.org/content/PolicyCenters/Justice/Overview.htm>

Neighborhood Justice Center, Tallahassee, Florida.

The Center's primary goal is to provide local residents, businesses, and institutions with access to problem solving, dispute resolution and related legal services enabling them to effectively resolve disputes in a non-adversarial fashion and to lessen the burden on the criminal justice system.

<http://www.tallytown.com/njc>

Vera Institute of Justice, New York, New York.

The Institute works closely with leaders in government and civil society to improve the services people rely on for safety and justice. Vera develops innovative programs, studies social problems and current responses, and provides practical advice and assistance to government officials in New York and around the world.

<http://www.vera.org/>



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The following articles or abstracts may be obtained on request at The American Center's Information Resource Center. For general information regarding the IRC, visit:
<http://israel.usembassy.gov/public/accjer.htm>

Only for a Season: Mandatory Mediation as a Temporary Measure

Stephen Peltz. Carleton University, June 1999

Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court

Michele Sviridoff (Editor), David Rottman, Brian Ostrom, Richard Curtis, National Institute of Justice U.S., State Justice Institute U.S., September 2000

Specialized Justice: Courts, Administrative Tribunals, and a Cross-National Theory of Specialization

Stephen H. Legomsky, October 1990

Community Justice Ideal

Todd R. Clear, David Karp, July 1999

Community Justice: An Emerging Field

David R. Karp (Editor), July 1998

Stir It Up; Lessons in Community Organizing and Advocacy

Rinku Sen (Editor), February 2003

Organizing for Neighborhood Justice: The Formation and Implementation of the Uptown-Edgewater Neighborhood Justice Center in Chicago

James H. Klein, John W. Payton, December 1980, Center for Urban Policy Series

Peacemaking in Your Neighborhood: Reflections on an Experiment in Community Mediation

Jennifer E. Beer Friends Suburban Project, June 1986

Community Mediation: A Handbook for Practitioners and Researchers

Karen Grover Duffy (Editor), Paul V. Olczak (Editor), James W. Grosch (Editor), April 1991

Keeping It in the Community: An Evaluation of the Use of Mediation in Disputes Between Neighbours

Linda Mulcahy, April 2001

Community Mediation

John Allen Lemmon, September 1984



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Responding to Community Conflict: A Review of Community Mediation

John Gray, Moira Halliday, Andrew Woodgate, June 2002

Community Mediation Programs: Developments and Challenges

Daniel McGillis, June 1997

Peace Skills: Manual for Community Mediators

Ronald S. Kraybill (Author), Alice Frazer Evans (Contributor), Robert A. Evans ,
February 2001

Cybermediation: A New Twist on an Old Concept

Cheri M. Ganeles, Albany Law Journal of Science & Technology, 2002

A Colloquium on Community Policing

Anthony V. Alfieri , California Law Review, October 2002

Lawyers, Non-Lawyers, and Mediation: Rethinking the Professional Monopoly from a Problem-Solving Perspective

Jacqueline M. Nolan-Haley, Harvard Negotiation Law Review, Spring 2002

Perspectives on Dispute Resolution in the Twenty-First Century: Forgetfulness, Fuzziness, Functionality, Fairness, and Freedom in Dispute Resolution: Serving Dispute Resolution Through Adjudication

Jeffrey W. Stempel , Nevada Law Journal, Winter 2002/2003

When Fences Aren't Enough: The Use of Alternative Dispute Resolution to Resolve Disputes Between Neighbors

Nathan K. DeDino, Ohio State Journal on Dispute Resolution, 2003

Neighborhood Justice Centers: An Analysis of Potential Models

American Psychological Association, Inc., 2002

Problem Solving Courts and Therapeutic Jurisprudence: Due Process and Problem Solving Courts

Eric Lane, Fordham University School of Law Journal, March 2003

Special Problems for Specialty Courts

Wendy Davis, ABA Journal, 2003

The Effects of Drug Treatment and Supervision on Time to Re-Arrest among Drug Treatment Court Participants

Duren Banks, Denise Gottfredson, Journal of Drug Issues, Spring 2003



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